THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 2169 of 2004

Date: 24.07.2006

Between:

The Government of Andhra Pradesh, rep.,by its Secretary to Government, Finance and Planning (P,g.Wing) Department, Secretariat, Govt. of A.P. Hyderabad and another.

... Petitioners.

And

Damodar Rao.

... Respondent.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 2169 of 2004

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard the learned Government Pleader for services, appearing on behalf of the petitioners and Sri Damodhar Rao, the respondent party-in-person and with their consent the writ petition itself was taken up for final disposal.

Aggrieved by the order of the A.P. Administrative Tribunal, in O.A.No. 2248 of 2003 dated 26.08.2003, the present writ petition is filed by the Government of Andhra Pradesh.

Facts, to the extent necessary, are that the sole respondent in this writ petition (the applicant in the O.A) was appointed as a Progress Assistant in the A.P. Economic and Statistical Subordinate Services on 16.05.1961. He was promoted as a Senior Investigator on 16.07.1976, (which post was subsequently re-designated as Dy. Statistical Officer), in a clear vacancy meant for promotees. The respondent's services were regularized on 05.01.1982, though he had worked continuously without break of service, as a Senior Investigator ever since 16.07.1976. 36 employees, in the category of Senior Investigators including the sole respondent herein, filed R.P.No. 70 of 1987 before the Tribunal challenging the fixation of their seniority in the category of Senior Investigators, vide memo dated 01.08.1986. The Tribunal, in its order in R.P.No. 70 of 1987dated 07.10.1988, observed that

promotions made to the post of Senior Investigator, after 18.10.1975, was not made on a zonal basis which was contrary to the presidential order and that the government had adopted two different procedures one under Rule 33 of the A.P. State and Subordinate Services for direct recruits and another under the rota-quota rules for promotes which was impermissible in law. The Tribunal held that, if the rota-quota rule were to be applied, then the seniority list must also be prepared in conformity with rotation, otherwise the length of service ought to have been adopted for fixing seniority. The government, issued G.O.Ms.No. 53 dated 04.09.1990, proposing to revise the seniority list of Senior Investigators (Deputy Statistical officers). The provisional seniority list was prepared contrary to the order of the Tribunal in R.P.No. 70 of 1987 and G.O.Ms.No. 607 dated 06.11.1992 which provides for application of the rota-quota rule for recruitment but not for seniority. Based on the said provisional seniority list, a final seniority list was published on 01.06.1991 wherein the resopndent's earlier service was not taken into consideration while fixing his seniority. The respondent herein submitted a representation on 30.12.1992 seeking proper fixation of his seniority in accordance with the order of the Tribunal in R.P.No. 70 of 1987 and G.O.Ms.No. 607 dated 06.11.1992. On 21.08.1993, the Government informed him that his representation dated 30.12.1992 would be examined after the Tribunal disposed of O.A.No. 22 of 1993 and batch wherein the validity of G.O.Ms.No. 607 dated 06.11.1992 was in issue. Subsequent thereto, the respondent herein was promoted as a Statistical officer on 28.08.1993 and as an Assistant Director on 04.03.1996. Eventually he retired from service on reaching the age of

superannuation on 31.10.1996. The Tribunal disposed of O.A.No. 22 of 1993 and batch, by order dated 01.12.1998 and, while upholding the validity of G.O.Ms.No. 607 dated 06.11.1992, clarified that rota-quota under the special rules was for recruitment but not for seniority and that seniority was to be regulated as per Rule 33(A)&(B) of the A.P. State & Subordinate Services Rules.

The respondent herein, on coming to know of the order of the Tribunal in O.A.No. 22 of 1993 and batch dated 01.12.1998, submitted a representation on 14.08.2000 seeking revision of the seniority list in accordance with the assurance given by the petitioners herein in their earlier memo dated 21.08.1993. Since there was no response thereto, he filed another representation on 18.06.2001. This representation was forwarded by the 2nd petitioner herein to the 1st petitioner on 01.07.2001. However no action was taken in this regard.

Aggrieved by the action of the petitioners herein, in not acceding to his request, the respondent approached the lok- adalat which, by order dated 22.07.2002, left it open to the respondent herein to approach the appropriate forum as it had no power in this regard. The respondent herein filed O.A.No. 7800 of 2002 and the Tribunal, by order dated 21.08.2002, directed him to file a representation before the Government. The respondent submitted a representation on 28.08.2002, which was rejected by order dated 11.03.2003. Aggrieved thereby the respondent filed O.A.No. 2248 of 2003.

The Tribunal, in its order in O.A.No. 2248 of 2003 dated 26.08.2003, examined the matter both on the question of latches and on merits. On the question of latches, the Tribunal took note

of the fact that the respondent herein had filed R.P.No. 70 of 1987 seeking revision of the seniority list of Deputy Statistical Officers, that the matter had been remitted by the erstwhile Tribunal to the 1st respondent on 07.10.1988 to re-fix the seniority and that the respondent had finalized the seniority in the year 1991. After taking into account all subsequent events from 1991, including the memo dated 21.08.1993 wherein it was categorically stated that the representation submitted by the respondent would be disposed of after disposal of the O.A. pending before the Tribunal and that since the respondent's request had not been acceded to he had approached the Lok-adalat, thereafter the Tribunal and then the Government, the Tribunal held that since the respondent had been agitating his rights from 1987 onwards the contention of the petitioners herein that the relief sought for by the respondent suffered from latches was untenable.

On merits, the Tribunal took note of the fact that the respondent herein was promoted, though temporarily, as a Deputy Statistical Officer on 16.07.1976, that he continuously worked upto 05.01.1982 and only after arrival of the direct recruits his services were regularized as a Senior Investigator with effect from 05.01.1982. The Tribunal held that the respondent herein had continuously worked and that only for the purpose of waiting for direct recruits, regularization of his services was kept pending. Following the judgment of the Apex Court in **Direct Recruitee Class II Engineering Officers' Association Vs. State of Maharastra**[1], the Tribunal held that the respondent herein was entitled to his seniority in the cadre of Deputy Statistical Officers from 16.07.1976 and for consequential notional promotion. The

Tribunal, however, held that the respondent was not entitled to the difference of pay on notional promotion on the principle of "No work No pay". The Tribunal disposed of the O.A. holding that the respondent herein was entitled to his seniority in the cadre of the Deputy Statistical Officers with effect from 16.07.1976 and consequential notional promotion, accordingly his pay should be fixed notionally, thereafter his pension should be fixed and that he should be paid pensionary benefits within a period of four months from the date of receipt of a copy of the order. Aggrieved thereby the present writ petition.

The main contention, of the learned Government Pleader for Services, is that there is undue delay on the part of the respondent herein in approaching the Tribunal. Learned Government Pleader would submit that, while under Section 21 of the Administrative Tribunals Act the period of limitation for approaching the Tribunal is one year, the resopndent had sought to challenge the seniority list finalized on 01.06.1991 more than 12 years thereafter in the year 2003 and more than seven years after he had retired from service. Learned Government Pleader would contend that, if the relief granted by the Tribunal were to be upheld, it would open flood gates with similar such requests being made by all retired employees. We are afraid we cannot agree. The facts as stated above and as taken note of by the Tribunal would indicate that the respondent herein had been agitating his grievance eversince 1987 and in fact the Government itself, in its memo dated 21.08.1993, had informed him that the matter would be examined after disposal of O.A.No. 22 of 1993 and batch. Except for a short duration from 01.12.1998 to 14.08.2000 i.e., from the date when O.A.No. 22 of 1993 and batch was disposed of till the respondent submitted

another representation seeking revision of the seniority list, there has been no delay on the part of the respondent herein. The explanation given by him for this delay of one year eight months is that he was not aware of the order of the Tribunal as he had retired from service.

It is well settled that the power of judicial review under Article 226 of the Constitution of India is supervisory and not appellate. This Court would neither sit in appeal over the findings of fact recorded by the Tribunal nor would it substitute its conclusions for that of the Tribunal. It is only when the order of the Tribunal suffers from an error apparent on the face of the record would this Court exercise its certiorari jurisdiction and interfere with the order. The question of latches has been considered by the Tribunal in detail and on exercising its discretion the Tribunal, by a well considered order, rejected the contention that the application was hit by latches. It needs only to be noted that the Tribunal, for just and valid reasons and on sufficient cause being shown, is entitled under Section 21(3) of the Administrative Tribunals Act to entertain an application beyond limitation. We see no reason to interfere with the discretion exercised in this regard by the Tribunal. On merits, it is not in dispute nor can it be disputed in view of the law laid down by the Apex Court in **Direct Recruitee Class II Engineering Officers' Association**[1], that the respondent herein, on account of his continuous officiation as a Senior Investigator (Dy. Statistical Officer) was entitled to have this period of officiating service in a clear vacancy also reckoned for the purpose of calculating his seniority in the category of Deputy Statistical Officers. In any event, the order of the Tribunal would only result in upward revision in the pensionary benefits

payable to the respondent since he has already retired from service. The said order of the Tribunal, in the peculiar facts and circumstances of this case, would not amount to a precedent nor would others be entitled to approach the Tribunal belatedly and seek to have their cases treated similarly to that of the respondent herein. The contention of flood gates being opened, if the order of the Tribunal is confirmed, must therefore be rejected. We see no reason to interfere with the order of the Tribunal.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

Date: 24-07-2006

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RAMESH RANGANATHAN, J

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[1] (1990) 2 SCC 715